

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

ERIC REASON, an individual;
STEPHANIE BASS, an individual;
RASHEED REASON, individually and
as Co-Successor-in-Interest to
Decedent ERIC REASON II; TYRIQUE
REASON, individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II; K.R.,
individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II, by and
through his Guardian Ad litem
LATISHA PARKER; P.R.,
individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II, by and
through his Guardian Ad Litem
LATISHA PARKER; N.M.,
individually and as Co-
Successor-in-Interest to
Decedent ERIC REASON II, by and
through his Guardian Ad Litem
NIA MILLS; E.L.R., individually
and as Co-Successor-in-Interest
to Decedent ERIC REASON II, by
and through his Guardian Ad
Litem SHAWNTAY DAVIS; I.R.V.,
individually and as Co-
Successor-in-Interest to

No. 2:20-cv-01900 WBS JDP

ORDER DENYING MOTION FOR
INTERLOCUTORY APPEAL¹

¹ The court takes this motion under submission on the
papers, without oral argument, pursuant to Local Rule 230(g).

Decedent ERIC REASON II, by and
through his Guardian Ad Litem
JULIA VELASQUEZ;

Plaintiffs,

v.

CITY OF RICHMOND, a municipal
corporation, and the ESTATE OF
VIRGIL THOMAS, individually and
in his capacity as Police
Sergeant for the CITY OF
RICHMOND,

Defendants.

-----oo0oo-----

Defendant City of Richmond (the "City") moves for certification of the court's May 24, 2023 Order denying the City's motion for summary judgment (Docket No. 72) for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).² (Docket No. 73.)

The Ninth Circuit has held that § 1292(b) "is to be used only in extraordinary cases where decision of an interlocutory appeal might avoid protracted and expensive litigation." U.S. Rubber Co. v. Wright, 359 F.2d 784, 785 (9th Cir. 1966). It is "not intended merely to provide review of difficult rulings in hard cases." Id. The party seeking to appeal therefore has the burden of justifying a departure from the basic policy of postponing appellate review until after the

² Under 28 U.S.C. § 1292(b), a district court may certify for appeal an interlocutory order which is not otherwise appealable if the district court is "of the opinion that such order [1] involves a controlling question of law as to which [2] there is substantial ground for difference of opinion and that [3] an immediate appeal from the order may materially advance the ultimate outcome of the litigation." 28 U.S.C. § 1292(b).

1 entry of a final judgment. In re Cement Antitrust Litig., 673
2 F.2d 1020, 1026 (9th Cir. 1982).

3 For the reasons discussed in the court's May 24, 2023
4 Order, the court finds that the 28 U.S.C. § 1292(b) factors are
5 not met. There is substantial ground for a difference of opinion
6 in most seriously contested summary judgment motions. This case
7 is no exception. The California Supreme Court has repeatedly
8 articulated that whether an employee acted within the scope of
9 employment "is ordinarily a question of fact." See, e.g., John
10 R. v. Oakland Unified Sch. Dist., 48 Cal. 3d 438, 447 (1989);
11 Mary M. v. City of L.A., 54 Cal. 3d 202, 213 (1991) (citation
12 omitted).

13 The inquiry "becomes a question of law . . . when 'the
14 facts are undisputed and no conflicting inferences are
15 possible.'" Mary M., 54 Cal. 3d at 213 (quoting Perez v. Van
16 Groningen & Sons, Inc., 41 Cal. 3d 962, 968 (1986)). Here, as
17 the court explained in its May 24, 2023 Order, there are disputed
18 questions of fact, as well as conflicting inferences which may be
19 drawn, on the issue of whether Sergeant Thomas was acting within
20 the scope of his employment when he shot and killed Mr. Reason.

21 IT IS THEREFORE ORDERED that the City's motion for
22 certification of this court's May 24, 2023 Order (Docket No. 72)
23 for interlocutory appeal be, and the same hereby is, DENIED.

24 Dated: June 14, 2023



25 **WILLIAM B. SHUBB**
26 **UNITED STATES DISTRICT JUDGE**
27
28